

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BOSS WORLDWIDE LLC d/b/a ALGO ONLINE RETAIL, Plaintiff, vs. BEAU CRABILL, Defendant.	Civil Action No. 7:19-cv-02363-VB
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DECLARATION OF ERIC KOTCH

I, Eric Kotch, the undersigned, swear and state that the following is true and correct, and based on my personal knowledge unless otherwise indicated:

1. I am an officer for and Manager of Boss Worldwide LLC, which does business under the brand name ALGO. I am a resident and citizen of New York, and I work out of ALGO's headquarters in New York. I submit this Declaration in Opposition to the Motion to Dismiss ALGO's First Amended Complaint ("FAC").

2. In or about April 2018, ALGO was formed by myself, Beau Crabill and others as a Delaware entity with headquarters in New York. ALGO has no other office. By the terms of the Operating Agreement, which was executed on or about April 6, 2018 and is attached to the FAC as Exhibit A, Crabill and his father became 49% owners of ALGO.

3. Also on or about April 6, 2018, Crabill and ALGO entered into the Sale Agreement, which is attached to the FAC as Exhibit B. Under the terms of the Sale Agreement, the Crabills transferred the business and assets of their company, All Out Raw, to ALGO in return for their 49% share of ALGO. The Sale Agreement recites that ALGO has its principal

place of business in New York. The Sale Agreement also recites that it is governed by and construed in accordance with the laws of New York.

4. Also on or about April 6, 2019, Crabill and ALGO entered into the License Agreement, which is attached to the FAC as Exhibit C. Under the terms of the License Agreement, Crabill licensed the use of his name and image to ALGO. The License Agreement identified the licensee, ALGO, as a company based in New York. The License Agreement recites that it is governed by and construed in accordance with the laws of New York.

5. Under the terms of these agreements, Crabill became a co-founder, principal spokesperson for and minority owner of ALGO, a company he understood was headquartered in New York. ALGO products and services were sold in large part through beaucrabill.com.

6. During 2018 and the beginning of 2019, Crabill held himself out to customers as a member and agent of ALGO, and held out to those same customers that ALGO and Crabill were located in New York. For example, Crabill sent advertising and marketing email messages to thousands of ALGO customers and potential customers, in which he provided the New York headquarters address of ALGO as his contact information. Examples of these communications are attached as Exhibit D to the FAC. Crabill sent those emails from the email address he continues to use: Beau@beaucrabill.com.

7. During ALGO events, Crabill encouraged customers to enter into New York contracts. The contracts represented to customers that (i) the company providing these services was ALGO; (ii) that ALGO was located in New York; (iii) that the contract was governed by New York law; and (iv) all notice required under the terms of the contract was to be provided to ALGO's headquarters address in New York. The contracts further provided a New York phone number (with an "845" area code) as the customer support line for beaucrabill.com. Attached to

the FAC as **Exhibit E** are two two-page contracts signed by customers from California and New York respectively, which the customers executed at live events (in California and New York) during which Crabill pitched the services being sold in these contracts. The customers' personal identifying information has been redacted from the exhibit.

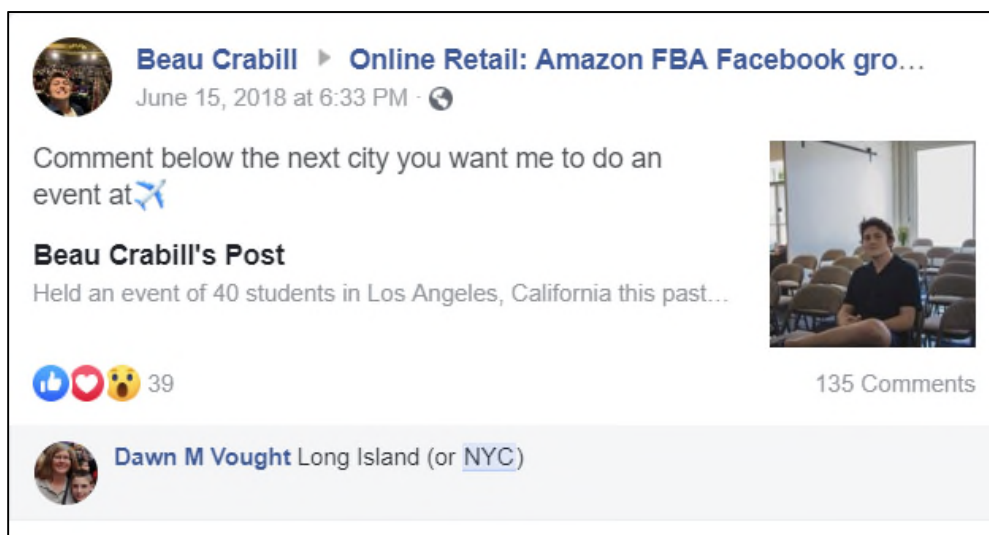
8. The staff principally responsible for the operations of ALGO were and are based in New York. This includes myself, Ben Kotch, Sam Kotch, and Mark Gonsalves (the "New York Staff"). Crabill knew the New York Staff lived and worked in New York. From April through December of 2018, Crabill communicated regularly with the New York staff on a variety of matters related to the conduct of the business, including by phone, email and text. Crabill's father made additional communications to the New York Staff. These communications included those about the ALGO promotional video, including the Crabill's communications in November 2018 to the New York Staff in New York to complain about the videographer's work ethic and request that ALGO's New York book keeper cease making payments to him, as well prior communications by Crabill and his father regarding the hiring and payment of the videographer .

9. When Crabill joined ALGO, he incorporated his customer list into a new customer list maintained and grown by ALGO. As of December 2018, that list had over three thousand entries. Over 150 of the entries on that list are for New York customers.

10. On or about May 21, Crabill and his father traveled to New York for several days, which included in-person meetings with the New York Staff. The parties met on May 21, 2018 for several hours, and then had dinner. During this trip, Crabill and his father provided the New York Staff with a check representing their capital contribution to the formation of ALGO.

11. During this same trip, on or about May 24, Crabill conducted a sales webinar event for customers from a WeWork office space in Long Island City, New York.

12. Crabill solicited business in New York. For example, he has created a public Facebook group, called “Online Retail Amazon FBA” on which he promotes his business to customers, including New York customers. In June 2018, a New York customer responded to a solicitation by Crabill to the Facebook group page. She suggested he conduct an event in New York, and he did conduct an event, as described below, the following month. A screenshot of the exchange is printed below:

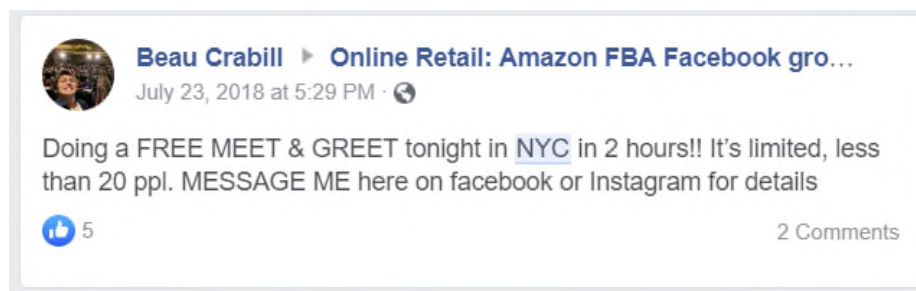


13. In July, Crabill and the New York Staff planned a trip for Crabill to come to New York between July 21 and July 27, 2018. On July 19, 2018, the New York Staff sent Crabill by email an agenda for his trip. The agenda provided for the New York Staff to pick up Crabill at the airport on the 21st, followed by six days of meals, meetings and events related to the ALGO business. Attached as **Exhibit 1** hereto is a true and accurate printout of an email from the New York Staff to Crabill entitled “Tentative New York Agenda,” which was part of the planning process for this business trip.

14. On July 21, 2019, Crabill arrived in New York. The New York Staff picked him up at the airport, took him to dinner, and then took him to his accommodations, which were paid for by ALGO. The New York Staff continued to provide transportation to Crabill throughout this trip.

15. On July 22 and July 23, 2019, Crabill and the New York Staff met with a marketing professional hired by ALGO to help grow the ALGO business. This included a dinner on July 22 and a business meeting in White Plains, New York on July 23, at a conference space rented by ALGO for the occasion.

16. On July 23, 2018, Crabill announced on the Facebook group that he was “doing a Free Meet & Greet tonight in NYC.” Crabill discussed the event with the New York Staff in advance. A screenshot of the announcement is reprinted below:



17. The “Free Meet & Greet” with customers took place at Bryant Park. Several days later, Crabill posted a video of this event on Instragram.com, including the message “Thank you New York! It was great meeting you all.” Crabill used the Instagram post to further interact with New York customers online. A true and accurate screen capture of the Instagram post is printed below:



18. On July 24, 2018, Crabill and the New York Staff conducted several hours of meetings regarding the ALGO business in White Plains, New York at the same conference space rented by ALGO.

19. On July 26, 2018, Crabill conducted a live webinar for customers, which he conducted from the home of one of the New York Staff, located in Westchester, New York.

20. After the July trip, as with other travel expenses during the parties' relationship, Crabill submitted his receipts to ALGO for reimbursement, and those expenses were reimbursed by ALGO. Crabill submitted his entire Airbnb bill for the full seven days he was in New York, and ALGO reimbursed him for that expense.

21. In his affidavit submitted to this Court on May 20, 2019, Crabill incorrectly described his July trip to New York as one where he merely "stopped by" New York City for only three days (July 23-25) to "hang out with ... friends." Crabill omitted from his affidavit that (i) it was a business trip planned by ALGO; (ii) that it lasted a full week in New York state and

not just three days in New York City; (iii) that it involved multiple meetings with the New York Staff about the business of ALGO; (iv) that he received an agenda in advance from the New York Staff; (v) that the expenses for the entire full week trip were paid for by ALGO; and (vi) that the trip included a meeting with New York customers.

22. On August 22, after a meeting in Boston, the New York Staff drove Crabill from Boston to Westchester, New York, where he met with the New York Staff again about the ALGO business.

23. During the summer and fall of 2018, Crabill and his father continued to communicate regularly, and often daily, with the New York Staff by telephone, email and text.

24. In early November, ALGO and Crabill conducted their first live event, which took place in Los Angeles. The press release issued by the parties for the event provided “New York” as the issuing location of the press release. The contact information for the press release held out Crabill as the media contact and founder of ALGO, and stated that he was reachable at a New York phone number: “Beau Crabill, Boss Worldwide LLC, +1 845-684-0531.” I have attached a copy of that press release as **Exhibit 2**. It is also available at <https://finance.yahoo.com/news/beau-crabill-kicks-off-algo-155400997.html>.

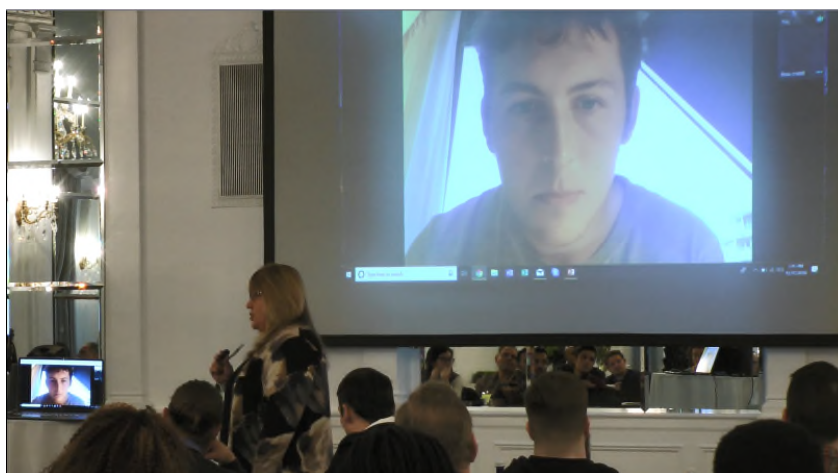
25. During the ALGO event in Los Angeles, Crabill and ALGO proffered contracts to attendees proposing the purchase of additional services from “Beau Crabill” and beaucrabill.com. As described above, the contracts represented to customers that the company providing the services was Boss (ALGO’s corporate name); that Boss was located in New York; that the contract was governed by New York law; and that all notice required under the terms of

the contract was to be provided to ALGO's headquarters address in New York. The contracts further provided a New York phone number (with an "845" area code) as the customer support line for beaucrabill.com.

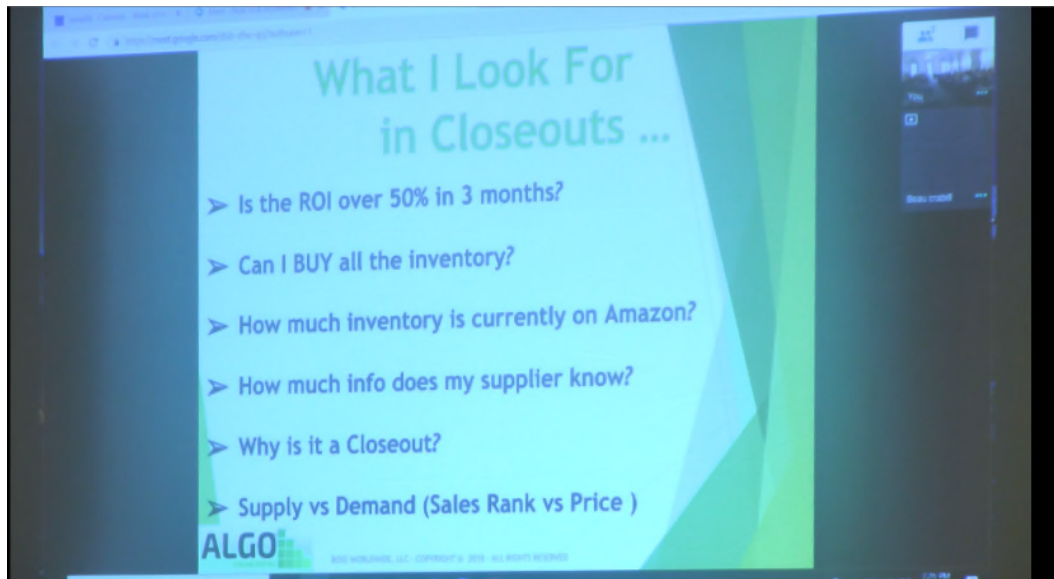
26. On or about November 17-18, 2018, ALGO conducted another live event at the Stewart Hotel in New York City for over 50 customers.

27. Crabill's initial affidavit to this Court deceptively gave the impression that he and his father had nothing to do with this event. That is false. Both Crabill and his father helped plan the event, actively participated in it, presented content to customers, and promoted ALGO services during the event.

28. Crabill himself presented as a faculty member at the New York event live via video conference for nearly forty minutes, during which he lectured on how to sell on Amazon.com, and answered questions from the customers sitting in the Stewart Hotel in New York. A screenshot of Crabill listening to a question from a New York customer is reprinted below:



29. During his lecture, Crabill presented a Power Point presentation. The slides Crabill used were marked with the ALGO logo and contained a “Boss Worldwide LLC” copyright notice. A screenshot of Crabill presenting the PowerPoint presentation is printed below:



30. Crabill’s father appeared in person at the New York event, also as part of the faculty, and spoke twice for approximately an hour in total. On the first day of the seminar, Crabill’s father introduced himself as a business partner of Crabill and then proceeded to promote Crabill’s services. On the second day, Crabill’s father lectured the students for over forty minutes, during which he explained and promoted the mentoring services offered by Crabill through contracts with ALGO.

31. During the entire New York event, an ALGO promotional poster depicting Crabill was displayed. A screenshot of Crabill’s father lecturing to customers about ALGO services at the Stewart Hotel in New York, with a poster of Crabill in the background, is depicted below:



32. At the New York event, the faculty, including Crabill and his father, promoted software and mentoring services from Beau Crabill and beaucrabill.com that New York customers could obtain entering into a contract with ALGO. These contracts, like those provided at the Los Angeles event, represented to customers that the company providing “Beau Crabill” services, and services through the beaucrabill.com website, was Boss (ALGO’s corporate name). The contracts further represented that Boss was located in New York, that the contract was governed by New York law, and that all notice required under the terms of the contract was to be provided to ALGO’s headquarters address in New York. The contracts further provided a New York phone number (with an “845” area code) as the customer support line for beaucrabill.com. Exhibit E to the FAC contains an example of a contract signed by a resident of Saratoga, New York at the New York event at which Crabill and his father presented. The personal identifying information of the customer has been redacted.

33. The ALGO finances were run by the New York Staff from New York. The New York staff hired a bookkeeper based in New York. Crabill and his father frequently communicated with the bookkeeper to ask for disbursements and reimbursements related to their

work for and membership in ALGO. Between April and approximately December 2018, the Crabills received from the New York Staff and New York bookkeeper distributions in the amount of approximately \$600,000, as well as reimbursements for travel and other expenses.

34. Even after the dispute between ALGO and Crabill arose, Crabill continues to use the “Online Retail Amazon FBA” Facebook group to communicate with New York customers and talk about his New York business contacts. Below is a screenshot of a New York customer asking Crabill to conduct a “meet up” with customers during a March 2019 trip to New York. Crabill responded that he was not conducting a “meet up” on this trip, but he was in fact “doing some business” in New York with Tai Lopez, who is in the same general business as Crabill and ALGO.



35. In addition to the training seminars and videos teaching customers how to sell products on Amazon.com, Crabill also runs a profitable business in which he sells products on Amazon. During his trips to New York to conduct the business of ALGO, Crabill informed the New York Staff that he was also meeting with suppliers for this business who were located in

New York. The business trip agenda provided to Crabill by the New York staff in July 2018 reserved Wednesday, July 25, for meetings with “suppliers in consumer good/apparel industry.”

Exhibit 1.

36. During the New York ALGO event in November 2019, Crabill’s father described to customers how Crabill conducted his business online. Crabill’s father explained that he and Crabill had good relationships with suppliers and had “so many [suppliers] in New York” that provided them with products to sell online.

37. One of Crabill’s New York suppliers is Alliance Distributors. Credit card receipts submitted to ALGO’s bookkeeper by Crabill and his father indicate that between May and October of 2018, Crabill spent at least over \$10,000 with this New York supplier, including a charge of over \$2,500 that occurred during Crabill’s May business trip to New York to meet with ALGO.

38. As a result of Crabill’s defamation and other tortious actions towards ALGO since becoming estranged from the company (described in the FAC at ¶¶ 46-51), ALGO has lost business from customers in New York. At least one New York customer specifically cited Crabill’s communications to him as the basis for returning ALGO products so he could purchase the same or similar products from Crabill instead.

39. In support of his motion to dismiss, Crabill submitted as an exhibit to his affidavit a printout of the ALGO video on the “Beau Crabill” YouTube channel. (Dkt. # 32, Ex. A). After seeing that exhibit, the New York Staff and I searched the “Beau Crabill” YouTube channel at <https://www.youtube.com/channel/UC5B7xCFxOr1S2jOIrDEFWgA/videos> and learned that the video is not actually displayed for public view. The Exhibit indicates the video is “Unlisted.” According to YouTube’s help page, an “unlisted” video is one that “won’t appear to others who

visit” the channel page, and is only available to people that are provided a specific link to it. This information is available at:

<https://support.google.com/youtube/answer/157177?co=GENIE.Platform%3DDesktop&hl=en>.

40. On the “Beau Crabill” YouTube channel, Crabill often offers legal advice to his customers, although he is not a lawyer. For example, one video is entitled “How I *LEGALLY* Sell Name Brand Products on Amazon FBA” and is available at

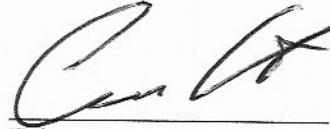
https://www.youtube.com/watch?v=CwoznC8_1fI. In that video, Crabill purports to give legal advice about the “first sale” doctrine and international copyright law. He states that “in China and other countries, they don’t have copyright laws, meaning they can sell you fake goods.”

Screenshots of the video are reprinted below:



41. The parties to the present dispute engaged in a full day mediation on or about March 28, 2019. Prior to the mediation, the parties jointly submitted a general description of the dispute to the mediator, which stated that it involved contract claims and “additional claims, including breach of fiduciary duty, infringement of intellectual property and defamation.” Prior to the mediation, we submitted a copy of the first complaint in this matter in order to inform the mediator about our Section 512(f) DMCA misrepresentation claim. In the mediation, we demanded that the false takedown notices be withdrawn as part of a global settlement, and discussed that issue with Crabill and his attorney.

I declare under penalty of perjury that the foregoing is true and correct, based on my personal knowledge, and that this declaration was executed by me on 7/18, 2019, in Four River New York.

A handwritten signature in black ink, appearing to read "Eric Kotch", written over a horizontal line.

Eric Kotch

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed through the Court's electronic filing system, which will automatically send copies to counsel for the parties.

/s/Mital Patel

Mital Patel

EXHIBIT 1

From: Sam Kotch

Sent: Thursday, July 19, 2018 2:04 PM

To: Beau crabill

Cc: tomcrabill@gmail.com; stevesitkowski@gmail.com; Mark Gonsalves; Eric Kotch; Ben Kotch

Subject: Tentative New York Agenda

Beau-

In preparation for your upcoming visit below is a tentative schedule.

Please keep us posted on your AirBNB Location so we can coordinate logistics.

Look forward to seeing you and let me know if you have any questions.

Sam

Saturday

12:30-1:00 | S&B will pick Beau up at Newark

1:00-2:00 | Lunch with Beau

2:00 | Drop off Beau at Air BNB

Sunday

6:00-8:00 | Intro Dinner w/ Andrew

Monday

10:00-5:00 | Meeting w/ Andrew

Fact gathering led by Andrew.

Andrew needs complete info gathering and group discussion on marketing components.

Conclusion should be immediate tactical plan addressing short term needs and brand development.

***Location Koi Creative Space White Plains

Tues

10:00-5:00 | Boss Internal Meeting

Discussion of various seminar upsell product and pricing components.

Discuss Summit Test Markets in August.

Mark led coaching of Beau to improve presentation.

***Location Koi Creative Space White Plains

Wed

TBD

Trying to set up meetings with friends that are suppliers in consumer good/ apparel industry

***Location TBD (both have warehouses in New Jersey Area)

Thurs

Prep for live Webinar

***Location Koi Creative Space White Plains or Mark's home office

Fri

Beau Departs- which Airport?

Sam Kotch

Acquis Capital LLC

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C: 845.596.5418

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www.acquiscapital.com

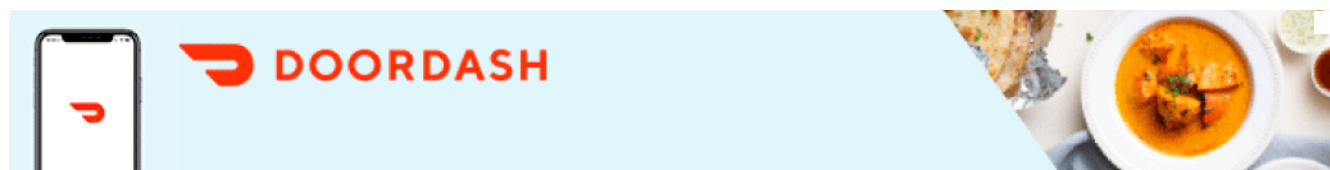
EXHIBIT 2

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+14.04 (+0.17%)**Russell 2000**1,561.82
-8.18 (-0.52%)WE PUT THE EDGE
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Beau Crabill, Founder of The world's #1 Online Retail Training and Software company welcomes Entrepreneurs to ALGO™ Online Retail Accelerators for two days of acceleration, inspiration, learning, and fun. Breakthrough Strategies, Education and Software will be revealed at The ALGO™ Online Retail Accelerators.

NEW YORK, Nov. 2, 2018 /PRNewswire-iReach/ -- **Boss Worldwide, LLC ("ALGO™")**, the global leader in training and software tools for E-Retail Entrepreneurs, will welcome 55 registered attendees from five states to the first ever ALGO™ Online Retail Accelerator in Newport Beach California (the "Event") this weekend. At the Event, The ALGO™ Team and Founder, Beau Crabill, are unveiling new business strategies, software's and support tools to help entrepreneurs accelerate their online retail businesses.

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PR Newswire November 2, 2018

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Beau Crabill, Founder of ALGO(™) Online Retail

Man Who Called DOW 20,000 Has New 2019 Prediction

Stansberry Research Sponsored 

"We're thrilled to welcome our E-retail Entrepreneurs to the 1st ever ALGO™ Online Retail Accelerator and to empower them with the technology, business services and skills they need to thrive in the Online Retail Revolution," said [Beau Crabill](#), Founder of ALGO™. "We are rolling out more ALGO™ Online Retail Accelerators in the future and can't wait to see our partners and their success. We could not be more excited."

Amazon's stock is 'not without risk': Analysts

Yahoo Finance

"Nearly every industry is going through an amazing shift from physical to online," said Beau Crabill. "Our ALGO™ Online Retail Accelerators will enable my 1,000+ students to accelerate their businesses by giving them hands-on training with tools and strategies that I've used to grow my own online business."

About Boss Worldwide, LLC

Founded by online retail visionary, [Beau Crabill](#), Boss Worldwide, LLC provides education, tools, and support for online retail businesses. Based on 10+ years of online retail experience, Beau created the ALGO™ Online Retail Strategy of sourcing brand name products from US-based suppliers and selling them through online platforms like Amazon.

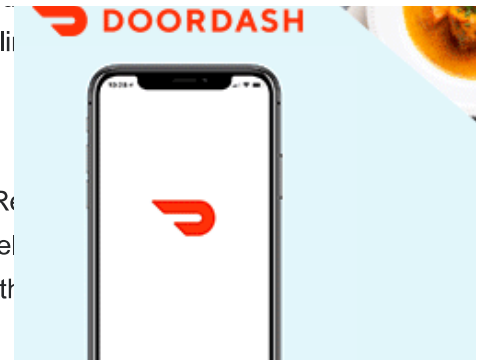
Amazon's Prime Holiday Is Still Not the Peak of Online Sales Day

TheStreet.com

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year-old retail model to profit from the growing online retail market.

As the inventors and foremost authority on the ALGO™ Online Retail Strategy, ALGO™ Online Retail provides professional-level tools and training to help online businesses identify and execute their growth plans.



Learn more at www.ALGOonlinetail.com

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